

**Letters of Findings Number: 02-20110256P
Corporate Income Tax – Negligence Penalty
For the Period 2009**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-6-1(c); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer filed a federal extension for its 2009 federal income tax. Under IC § 6-8.1-6-1(c), Taxpayer was required to pay at least ninety percent of its Indiana income tax that was reasonably expected to be due on the original due date by that due date. Taxpayer's payments for the 2009 tax year did not total ninety percent of its Indiana income tax that was due. Taxpayer was assessed a ten percent penalty. Taxpayer in turn protested the penalty, and this Letter of Findings results. More facts will be provided as needed below.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty imposed due to Taxpayer's failure to remit ninety percent of the full amount of corporate income tax on or before the due date for payment.

Under IC § 6-8.1-10-2.1, penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. The Department also notes that [45 IAC 15-11-2](#) further provides in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer states in correspondence to the Department that "the company did not remit 90[percent] of the current year tax, prior to the original due date of the return."

The applicable statute is IC § 6-8.1-6-1(c), which provides that:

(c) If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90[percent]) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax. (Emphasis added).

Thus the question before the Department is whether or not Taxpayer paid at least ninety percent of its Indiana income tax that Taxpayer reasonably expected to be due on the original due date by that due date.

Taxpayer states that for the year at issue it paid "81.33[percent] prior to the original due date of the return."

Taxpayer also states:

[T]hat the tax due with the 2009 tax return was a direct result of the loss of the Indiana Research Expense Tax Credit for 2009. Historically the company had a research expense tax credit...."

Taxpayer argues that it had a change of financial controllers, which resulted in the following:

[A] significant amount of 'knowledge' was lost and the data needed to properly calculate the research expense tax credit was simply not accumulated properly. Accordingly, the research expense tax credit for 2009 was computed at zero.

In other correspondence to the Department, Taxpayer states:

For 2009, the Company reasonably estimated a research credit as credits were claimed in prior years and there had not been a material change in the Company's business operations. However, due to unanticipated circumstances... the Company was not able to claim a research credit on their 2009 Indiana tax return.

Turning to the argument, the Department notes that Taxpayer has taken the Indiana Research Expense Credit (See IC § 6-3.1-4 et seq.) in the past. For the tax year at issue, 2009, Taxpayer believed it was going to take the research expense credit but was unable to take the credit (as noted above, Taxpayer states that it did not accumulate the data needed to calculate the credit because of a change in financial controllers). Based upon Taxpayer's mistaken belief that it would once again be taking the credit, Taxpayer's payments towards the 2009 liability ultimately totaled approximately 81 percent of the actual Indiana income tax liability that was due for 2009. The Department also notes that if Taxpayer's prior tax liabilities are used as a guide for what it should have reasonably expected to be due for 2009, then Taxpayer's 2009 payments were in excess of the ninety percent amount for the tax years 2005 through 2008 (with or without the credit for 2005 through 2008, Taxpayer's 2009 payments were in excess of ninety percent for each of those years). Based upon Taxpayer's argument and the information provided, the Department finds that Taxpayer has established reasonable cause under [45 IAC 15-11-2](#).

FINDING

Taxpayer's protest is sustained.

Posted: 09/28/2011 by Legislative Services Agency

An [html](#) version of this document.